# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES SAN FRANCISCO OFFICE

PUGET SOUND AREA LOCAL #298, affiliated with the AMERICAN POSTAL WORKERS UNION, AFL-CIO (United States Postal Service)

and Case 19-CB-9568

LI EAGLE RANSOM, an Individual

AMERICAN POSTAL WORKERS UNION, AFL-CIO (United States Postal Service)

and Case 19-CB-9593

LI EAGLE RANSOM, an Individual

Ryan E. Connolly, Esq., Daniel Apoloni, Esq., of Seattle, Washington, for the General Counsel.

Anton G. Hajjar, Esq., (O'Donnell, Schwartz & Anderson) of Washington, D.C., for the Respondents.

Li Eagle Ransom, an Individual, of Tacoma, Washington, Pro se.

### **DECISION**

## Statement of the Case

JAY R. POLLACK, Administrative Law Judge. This case was submitted to me based on a stipulation of facts dated September 17, 2007. On February 13, 2007, Li Eagle Ransom (Ransom) filed the charge in Case19-CB-9568 alleging that Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL-CIO (Respondent Local), committed certain violations of Section 8(b)(1)(A) of the National Labor Relations Act, as amended (29 *U.S.C. Section 151* et seq., herein called the Act). On April 5, 2007, Ransom filed the charge in Case 19-CB-9593 alleging that American Postal Workers Union, AFL-CIO (Respondent National) committed certain violations of Section 8(b)(1)(A) of the Act. On April 26, 2007, the Regional Director for Region 19 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent Local, alleging that Respondent violated Section 8(b)(1)(A) of the Act. On July 31, the Regional Director issued a consolidated complaint and notice of hearing in Cases 19-CB-9568 and 19-CB-9593 alleging that both Respondents

violated Section 8(b)(1)(A) of the Act. Respondents filed timely answers to the complaint denying all wrongdoing.

By stipulation, the parties have waived their right to a hearing before an Administrative Law Judge. All parties have been given the opportunity to file briefs. Upon the stipulated record, including all exhibits thereto, and having considered the briefs filed by the parties, I make the following:

# Findings of Fact and Conclusions

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#### I. Jurisdiction

The United States Postal Service (Employer) provides postal service for the United States of America and operates various facilities in the United States in performance of that function, including facilities in Tacoma, Washington.

The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209.

Respondents are both and have been, at all times material, labor organizations within the meaning of Section 2(5) of the Act.

## II. The Alleged Unfair Labor Practices

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# A. The Stipulated Facts

At all material times, by virtue of Section 9(a) of the Act, Respondents have been the exclusive collective-bargaining representative covering employees in an appropriate unit, including FSM clerks (Unit) in and around Tacoma, Washington. At all material times, Respondents and the Employer have maintained and enforced a collective-bargaining agreement covering conditions of employment of the Unit and containing, among other provisions, a grievance and arbitration procedure.

In about June 2003, the Employer and Respondent National entered into a Settlement Agreement resolving certain outstanding grievances involving the Postal Service's assignment of non-Unit casual employees in lieu of regular work force employees. Respondent National designated Respondent Local to determine the distribution of a portion of the funds provided by the settlement.

Respondent Local determined payments would be based on how much a Unit employee worked during the time the grievances had been pending. Respondent Local made this determination without regard to union membership. Respondent Local performed this calculation and provided the information to Martin Barron, national business agent for Respondent National. Barron informed the Employer of the amounts each eligible Unit employee was due. The Employer issued payment to the Unit employees consistent with Respondent's Local's calculation. Ransom was one of the employees issued a check in the initial distribution.

Prior to February of 2005, it became apparent that a number of employees eligible to receive checks under the initial distribution could not be located. In February of 2005, Respondent Local requested the Employer pursuant to the Settlement Agreement, to remit payment directly to Respondent Local in the amount of the unclaimed checks. The Employer

preferred not to issue the money directly to Respondent Local and was willing to pay a greater total amount if the Respondent Local were willing to waive its right to receive payment directly and instead designate employees for direct payment. The Greater Seattle Area Local, which was covered by the same settlement agreement, insisted on its right to payment directly to it, and the Employer paid that local directly. Respondent National, by Barron, negotiated with the Employer regarding the unclaimed amount. These negotiations resulted in an agreement in February of 2006. Under that 2006 Settlement, Unit employees, identified by Barron, would receive a lump sum payment.

Respondent Local determined the amount would be divided equally among employees who were members of Respondent Local during the last payroll period of December 2003, and still employed at the time of the 2006 Settlement. The method of distribution conditioned the ability of employees to share in the distribution upon their union membership. Respondent Local, by Douglas Blakely, president of Respondent Local, chose this method of distribution based on the understanding the Employer owed the money directly to Respondent Local under the 2003 Settlement and Respondent Local was free to do with the money as it wished. Respondent Local, by Blakely, intended to reimburse members for the cost of pursuing these grievances: the second distribution was intended as a refund of dues. Respondent Local, by Blakely chose December 2004 as the determination date because it was the mid point of the initial distribution and as a result, accurate records of membership were readily available for this period.

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Barron and Blakely discussed this method of distribution in February or March of 2006. Barron told Blakely it was Respondent Local's decision which employees would receive money, because the money was due to Respondent Local under the 2003 Settlement and therefore Respondent Local could do as it pleased.

In March of 2006, Blakely provided a list of employees to Barron, consistent with the criteria described above. Barron performed the calculation to determine the amount owing each member and provided the results to the Employer. Several days later, due to a calculation error, Barron again submitted the list with his handwritten corrections to the amount due. In November of 2006, the Employer made payments directly to the employees consistent with the information provided.

Ransom is not a member of Respondents. Other unit employees are not members of Respondent. Ransom was employed during the last payroll period of December 20003 and still employed at the time of the 2006 Settlement. Ransom did not receive any payment in the second distribution. Similarly other Unit employee non-members of Respondents did not receive payment in the second distribution. The unit non-member employees, employed during the last payroll period of December 2003 and still employed at the time of the 2006 Settlement, did not receive any payment because of their non-membership.

## B. Analysis and Conclusions

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." The proviso to Section 8(b)(1)(A) states that the Section "shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative to fairly represent all employees in the bargaining unit and to refrain from any action against any employee based upon considerations or

classifications which are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); see also *Miranda Fuel Company*, 140 NLRB 181 (1962).

In American Postal Workers Union, Local 735 (United Postal Service), 342 NLRB 545 (2004), the Board found a violation where the union excluded non-members from the distribution of the proceeds from a class action grievance. Citing National Association of Letter Carriers, Local 3825 (United States Postal Service), 333 NLRB 343, 353 (2001) the Board held to exclude an employee from a grievance settlement simply because she is not a member of the union is clearly a violation of Section 8(b)(1)(A). In Red Bank Local, American Postal Workers Union AFL-CIO, 344 NLRB No. 89 (2005), the Board found in a default judgment that the respondent-union violated the Act by failing and refusing to include nonmembers in the distribution of the settlement of a class action grievance.

In the instant case, Respondents did not include non-members in the distribution based on their non-membership in Respondents. Thus, I find the dues rebate or monetary payment was reasonably calculated to, and did, interfere with the employees in their freedom of choice in accepting or rejecting the union security clause. Thus, I find the dues rebate and the granting of monetary payments violated Section 8(b)(1)(A) of the Act.

Respondents argue that they had a right to assign their contract rights to specific individuals, i.e., union members. I find that the statutory duty to represent all employees, not just union members, outweighs the right to assign their contract rights.

I find that Respondent National is liable for the unfair labor practices of Respondent Local. Joint and several liability between an international and local union is appropriate and necessary where: (1) the international delegated its own responsibilities to the local, which then violated the Act, *Montgomery Elevator Co.*,278 NLRB 871 (1986); (2) the international instigated, participated in or subsequently ratified or condoned the local's conduct, *Meat Cutters Local 222 (Iowa Beef Processors)*, 233 NLRB 839, 849-51 (1977); (3) the action by the local was pursuant to some mandate from or constitutional requirement of the international. *Auto Workers Local 449 (National Metalcrafters, Inc.)*, 283 NLRB 182 (1987); or (4) successorship principles, *Metallic Lathers Local 46 (Cement League)*, 259 NLRB 70, 71 (1981), where applicable.

In the instant case, Respondent National, by Barron, negotiated with the Employer regarding the unclaimed amount. These negotiations resulted in an agreement in February 2006. Under that 2006 Settlement, Unit employees, identified by Barron, would receive a lump sum payment. Respondent National delegated its authority regarding the settlement to Respondent Local which violated the Act. Further, Respondent National failed to object to Respondent Local's distribution to members only and thereby ratified or condoned the conduct of Respondent Local. Accordingly, I find that Respondent National also violated the Act.

## Conclusions of Law

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- 1. The Board has jurisdiction over the United States Postal Service (the Employer) and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209.
- 2. Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL-CIO (Respondent Local), and American Postal Workers Union, AFL-CIO (Respondent National) are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondents violated Section 8(b)(1)(A) of the Act by failing and refusing to include nonmembers of Respondents among unit employees who shared in the distribution of a 2006 lump sum payment made by the Employer to employees identified by Respondents, in settlement of a class action grievance.

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4. The Respondents' acts and conduct above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## The Remedy

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Having found that Respondents engaged in unfair labor practices, I recommend that Respondents be ordered to cease and desist therefrom and, take certain affirmative action designed to effectuate the policies of the Act. Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER

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The Respondents, Puget Sound Area Local #298, affiliated with the American Postal Workers Union, AFL-CIO, and American Postal Workers Union, AFL-CIO, their officers, agents, and representatives, shall:

#### 1. Cease and desist from

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(a) Failing and refusing to include nonmembers of Respondents among unit employees who share in the distribution of a 2006 lump sum payment made by the Employer to employees identified by Respondents, in settlement of a class action grievance.

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(b) In any like or related manner, restraining or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act

2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Make Li Eagle Ransom, and other injured nonmembers, whole for any loss of earnings and other benefits suffered as a result of the Respondents' failure and refusal to include nonmembers among unit employees who share in the distribution of a lump sum payment made by the Employer to employees by Respondents in settlement of a class action grievance with interest.

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(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all records in the possession of the Respondents, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

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 <sup>&</sup>lt;sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

5	(c) Within 14 days after service by the Region, post at their hiring hall, meeting rooms, and offices, copies of the attached notice marked Appendix".² Copies of the Notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the Notices are not altered, defaced, or covered by any other material.			
10	(d) Within 14 days after service by the Region, sign and return to Regional Director for Region 19 sufficient copies of the notice for posting by the United Postal Service, if willing, at all places where notices to employees are customarily posted. Further, Respondents shall duplicate and mail, at their own expense, a			
15	copy of the Notice to Employees and Members, to all former bargaining unit employees employed by the Employer at any time since November 2006, and to all current bargaining unit employees employed at any work site at which the Employer is unable for any reason to post the Notice to Employees and Members.			
20	(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.			
25	Dated, Washington, D.C. January 18, 2008			
30	Jay R. Pollack Administrative Law Judge			
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50	<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the			

National Labor Relations Board."

#### **APPENDIX**

## **NOTICE TO EMPLOYEES AND MEMBERS**

## Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join or assist any union

To bargain collectively through representatives of their own choice

To act together for mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to include non members of our Unions among unit employees who share in the distribution of a 2006 lump sum payment made by the United States Postal Service to employees identified by us, in settlement of a class action grievance.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL Make Li Eagle Ransom, and other injured nonmembers, whole for any loss of earnings and other benefits suffered as a result of the our failure and refusal to include nonmembers among unit employees who share in the distribution of a lump sum payment made by the United States Postal Service to employees by us, in settlement of a class action grievance with interest.

	_	Puget Sound Area Local, 298 affiliated with the American Postal Workers Union, AFL-CIO and American Postal Workers Union, AFL-CIO	
		(Labor Organizations)	
Dated	By		
		(Representative)	(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Federal Building, Room 2948 Seattle, Washington 98174-1078 Hours: 8:15 a.m. to 4:45 p.m. 206-220-6300.

#### THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 206-220-6284.